

Office of the Clerk  
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT  
95 Seventh Street  
Post Office Box 193939  
San Francisco, California 94119-3939

Cathy A. Catterson  
Clerk of Court(415) 556-9800

July 29, 2002

**Notice and Opportunity for Comment on  
Proposed Amendments to the Circuit Rules**

It is anticipated that numerous amendments to the Federal Rules of Appellate Procedure will be adopted December 1, 2002. The court has reviewed the Circuit Rules to ascertain what companion changes may be necessary in view of the revisions to the national rules of practice. A summary of the amendment to the federal rule and the proposed corresponding change to the circuit rule follows.

Comments are invited on the following proposed amendments to the Circuit Rules. **New or amended language is in bold print and underlined.** Comments should be submitted to Cathy A. Catterson, Clerk of Court/Circuit Court Executive, no later than **August 26, 2002.**

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**Fed. R. App. P. 25(c)(1)(d), Electronic Service Conditioned on Consent**

*Summary:* Electronic service permitted; predicated on consent of party being served.

**Proposed Addition to Circuit Rule 25-3,**  
**Facsimile Filing and Electronic Service**

\* \* \* \*

**25-3.3 Electronic Service**

**Electronic service is only permitted when the party being served has executed Form found in the appendix to these rules on or prior to the date the document is electronically served. The original and the copies of the initial electronically-served document filed with the court shall be accompanied by a copy of the consent form as**

**executed by the party served. If a party wishes to revoke such consent, the party shall inform counsel and the court by letter as to the revocation of consent. Substitution of counsel operates as a revocation of consent.**

**Proposed Form:**

**Consent To Electronic Service  
Pursuant to Ninth Circuit Rule 25-3.3**

I agree that \_\_\_\_\_,  
(law firm or name of unrepresented litigant)  
who represents \_\_\_\_\_ may electronically serve me  
(name of party)  
with copies of all documents filed with the court.

Electronic service shall be accomplished by (*check all that apply*):

\_\_\_\_\_ facsimile transmission to \_\_\_\_\_ (facsimile number)

\_\_\_\_\_ electronic mail at \_\_\_\_\_ (electronic mail address)  
limited to documents created in the following word proceeding  
formats: \_\_\_\_\_

\_\_\_\_\_ both facsimile transmission to \_\_\_\_\_ (facsimile number) and  
electronic mail at \_\_\_\_\_ (electronic mail address) limited to documents  
c r e a t e d   i n   t h e   f o l l o w i n g   w o r d   p r o c e e d i n g  
formats \_\_\_\_\_

\_\_\_\_\_ Electronic service must be accompanied by simultaneous service by  
mail or commercial carrier of a paper copy of the electronically served document

\_\_\_\_\_  
Attorney for \_\_\_\_\_  
(name of party)  
or Pro Se Litigant

### **Fed. R. App. P. 26(a)(2), Computing and Extending Time**

*Summary:* To promote conformity with the federal trial practice rules, the federal appellate rules will exclude Saturdays, Sundays and legal holidays when computing a period of time of less than 11 days unless the period is stated in calendar days; currently, the exclusion applies to period of less than 7 days. The circuit's current 7 to 10 day intervals therefore would automatically be expanded under the new computation formula. That enlargement may be inadvisable if the 7 to 10 day interval pertains to a time sensitive matter. The court wishes the following limits to be preceded by the term "calendar days" to preserve deliberately tight time frames:

Circuit Rule 3-3	7-day limit to designate transcript in preliminary injunction appeals
Circuit Rule 10-3	10 and 7-day limits, respectively, to designate, cross-designate and order reporter's transcripts]
Circuit Rule 22-4(d)	7-day limit to respond to stay motion in capital cases
Circuit Rule 28-4	7-day advance notice requirement regarding joint briefs
Circuit Rule 31-2.2(b)	7-day advance filing period for requests for extensions of time
General Orders to 6.3a / Advisory Note to Circuit Rules 35-1 to 3/40 - 1	7-day extension available from Clerk to file petition for rehearing in civil cases

The circuit additionally plans to

- Ⓒ change Ninth Circuit 27-9.2's 7-day period to respond to a motion for involuntary dismissal to 8 days to conform the circuit rule to the anticipated changes in Fed. R. App. P. 27(a)(3)(a)
- Ⓒ amend Rule 27-9.2's 10-day notice regarding the imposition of sanctions to a 14-day limit consistent with current practice.
- Ⓒ alter the 10-day period proscribed at Circuit Rule 39-1.5 to seek reconsideration of a clerk's order regarding a cost bill to 14 days to promote internal consistency with Circuit Rule 27-7's time limit to seek reconsideration.

### **Fed. R. App. P. 28(j), Citation to Supplemental Authorities**

Summary: Rule 28(j) letters will be subject to a 350-word limit. The rule does not propose a page or line-text calibration method. The absence of a page count equivalent may be problematic for unrepresented litigants. The draft rule tracks Circuit Rule 40-1's text governing petitions for rehearing.

### **Proposed Circuit Rule 28-6, Citation of Supplemental Authorities**

**The body of letters filed pursuant to Federal Rule of Appellate Procedure 28(j) shall not exceed two pages, unless it complies with the alternative length limitations of 350 words or 39 lines of text.**

**Cross reference:** Fed. R. App. P. 32(c)(2)

### **Fed. R. App. P. 32(a)(2), Form of Brief**

Summary: A supplemental brief is to be prepared with a tan cover. Currently, under Circuit Rule 30-1.5, excerpts have a tan cover. The color of the excerpts' cover is to be changed to orange to avoid confusion.

### **Proposed Amendment to Circuit Rule 30-1.5, Format of Excerpts of Record**

. . . . each copy must be securely bound on the left side and must have **an orange** ~~a tan~~ cover styled as described in FRAP 32(a).

### **Fed. R. App. P. 32(a)(7)(C)(ii), Certification of Compliance**

Summary: A national certification of compliance will be adopted to address standard length briefs; the accompanying committee note states that local variance is prohibited. However, the revision seems to permit a local certificate for briefs not subject to the federal rule's length limits. Accordingly, Circuit Rule 32-1 and the corresponding Form 8 will be limited to oversize briefs, including briefs filed in capital cases.

**Proposed Revision to Circuit Rule 32-1,**  
**Form of Briefs, Certificate of Compliance**

All briefs ~~must conform to the requirements of Fed. R. App. 32. In order to effectuate Fed. R. App. P. 32(a)(7)(C), each brief submitted under Fed. R. App. P. 32(a)(7)(A) or (B), Circuit Rules 28-4, Circuit Rule 32-2, 32-3 or Circuit Rule 32-4, must include a certificate with language identical to and a format substantially similar to Form 8 in the Appendix of Forms attached to these rules.~~

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**Revised FORM 8**

**CERTIFICATE OF COMPLIANCE  
PURSUANT TO CIRCUIT RULE 32-1**

Case No. \_\_\_\_\_

**(see next page) Form Must Be Signed by Attorney or Unrepresented  
Litigant and Attached to the Back of Each Copy of the Brief**

I certify that: (check appropriate options)

**Oversize Briefs:**

The court granted permission to exceed the length limitations set forth at Fed. R. App. P. 32(a)(7) by an order dated \_\_\_\_\_

or

An enlargement of brief size is permissible under Ninth Circuit Rule 28-4.

The brief is

\_\_\_\_\_ Proportionately spaced, has a typeface of 14 points or more and contains  
\_\_\_\_\_ words

or is

\_\_\_\_\_ Monospaced, has 10.5 or few characters per inch and contains  
\_\_\_\_\_ words or \_\_\_\_\_ lines of text

or is

\_\_\_\_\_ In conformance with the type specifications set forth at Fed. R. App. P. 32(a)(5) and does not exceed \_\_\_\_\_ pages

**Briefs in Capital Cases:** This brief is being filed in a capital case pursuant to the type volume limitations set forth at Circuit Rule 32-4 and is (check the applicable option):

\_\_\_\_\_ Proportionately spaced, has a typeface of 14 points or more and contains \_\_\_\_\_ words (opening, answering and the second and third briefs filed in cross-appeals must not exceed 21,000 words, reply briefs must not exceed 9,800 words)

or is

\_\_\_\_\_ Monospaced, has 10.5 or few characters per inch and contains \_\_\_\_\_ words or \_\_\_\_\_ lines of text (opening, answering and the second and third briefs filed in cross-appeals must not exceed 21,000 words or 1,950 lines of text, reply briefs must not exceed 9,800 words or 910 lines of text)

or is

\_\_\_\_\_ In conformance with the type specifications set forth at Fed. R. App. P. 32(a)(5) and does not exceed \_\_\_\_\_ pages (opening, answering and the second and third briefs filed in cross-appeals must not exceed 75 pages; reply briefs shall not exceed 35 pages)

\_\_\_\_\_  
Signature of Attorney or  
Pro Se Litigant